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## BOOK REVIEWS.

THE ORIGIN AND GROWTH OF THE AMERICAN CONSTITUTION. By Hannis Taylor. Boston: Houghton Mifflin Company. 1911. pp. xlii, 676.

The sub-title describes this book as "an historical treatise in which the documentary evidence as to the making of the entirely new plan of federal government embodied in the existing Constitution of the United States is, for the first time, set forth as a complete and consistent whole." The words "the entirely new plan" in this sub-title are an allusion to Alexis de Tocqueville's statement, quoted on p. 2, that our present Constitution is based "upon a wholly novel theory which may be considered a great discovery in modern political science . . . that the Federal Government should not only dictate but should execute its own enactments."

It is the view of this book, expressed emphatically in very many places, that for this great discovery the world is indebted to an anonymous pamphlet by Pelatiah Webster, a well-educated merchant of Philadelphia. The pamphlet in question is reprinted in the appendix (p. 526), where it receives from Mr. Taylor the sub-title of "The epoch-making draft of Pelatiah Webster, of February 16, 1783, in which is embodied the first draft of the existing Constitution of the United States." It ought to be read. It contains many suggestions, some of which have not been followed. There is, for example, a suggestion that Congress should be aided by a chamber composed of merchants—a view that may or may not have connection with Pelatiah Webster's own mercantile occupation. There is also a suggestion that in an emergency Congress should choose "a dictator who should have and exercise the whole power of both houses till such time as they should be able to concur in displacing him." There is also a suggestion that

"every person whatever, whether in public or private character, who shall by public vote or overt act disobey the supreme authority, shall be amenable to Congress, shall be summoned and compelled to appear before Congress and, on due conviction, suffer such fine, imprisonment, or other punishment as the supreme authority shall judge requisite."

Obviously Pelatiah Webster laid little emphasis on the division of powers into legislative, executive, and judicial; and obviously, too, he had no objection to bills of attainder and the like. Yet it would be a mistake to suppose that the whole of the pamphlet is composed of such matter as the extracts just now given. At the beginning are passages quite in harmony with the provisions ultimately inserted in the Constitution. The difficulty is in proving that in these matters Pelatiah Webster had priority.

Mr. Taylor does not appear to appreciate this difficulty fully. His readers, if acquainted with the subject, open his book with the impression that February 16, 1783, was a rather late date for anyone to form views indicating the inadequacy of the Articles of Confederation and the necessity of creating a central government of larger power. Bancroft has taught that at least ever since the appearance of Thomas Paine's *Common Sense*, in 1776, such ideas were common property.<sup>1</sup> Certain it is that such views were elaborated before February 16, 1783. That is clear from an examination of the writings of Alexander Hamilton—writings into which it is peculiarly worth while to look, because Hamilton, besides being a thinker of originality, was long General Washington's secretary, and as an incident of that service heard and read the views of many. On September 3, 1780, even before the Articles of Confederation had gone into effect, Hamilton wrote:

<sup>1</sup> History of the Constitution, Vol. I, p. 10.

"The fundamental defect is a want of power in Congress. It is hardly worth while to show<sup>1</sup> in what this consists, as it seems to be universally acknowledged.

He proceeded to particularize that the Confederation "gives the power of the purse too entirely to the State Legislatures"; and then he suggested "calling immediately a Convention of all the States" and granting to Congress "complete sovereignty in all that relates to war, peace, trade, finance, . . . duties, . . . coining money," etc.<sup>2</sup> The details are much the same as those which are found in Pelatiah Webster's pamphlet of 1783, and they should be carefully examined by anyone interested in this question of priority.

All that Mr. Taylor says in his text (p. 192) as to this paper of Hamilton's is that Hamilton

"was one of the first to entertain the thought, even though he did not express it publicly, that a Federal Convention should be called for the purpose of making an entirely new Constitution," with the foot-note:

"See his private letter to James Duane of Sept. 3, 1780, referred to in Gaillard Hunt's *Life of James Madison*, 108."

The paper by Hamilton was indeed a letter; but it is of consequence nevertheless, when one is discussing originality and priority, and, besides, a glance at the document shows clearly enough that to dismiss it as a mere private letter is to move rather alertly. The letter covers twenty-seven printed pages. It was written by Hamilton when secretary of General Washington. It was addressed to James Duane, Member of Congress—later a member of the Federal Constitutional Convention. It suggested, among other things, matters on which immediate action was wished by General Washington, and on which prompt action was in fact had. In short, it was a document meant to be used for public purposes. It may not have been seen by Pelatiah Webster; but Congress was sitting in Philadelphia, and as to Pelatiah Webster, according to an authority quoted by Mr. Taylor (p. 163, n. 1),

"it is a matter of tradition that members of Congress . . . were in the habit of passing the evening with him, to consult him upon financial and political concerns."

Again, as Mr. Taylor emphasizes the distinction between manuscript and print, it is worth noticing that in a paper—one of a series entitled *The Continentalist*—published by Loudon's New York Packet Company, Hamilton, under date of August 30, 1781, repeated that

"it is necessary to augment the powers of the Confederation," and that there must be "throughout the United States" taxes "granted to the Federal Government in perpetuity, and, if Congress think proper, to be levied by their own collectors," for the reason that: "The great defect of the Confederation is, that it gives the United States no property; or, in other words, no revenue, nor the means of acquiring it, inherent in themselves and independent of the pleasure of the different members. And power without revenue, in political society, is a name."<sup>3</sup>

Mr. Taylor seems not to cite this paper.

Still again, on July 21, 1782, the New York Resolutions for a General Convention of the States, probably written by Hamilton,<sup>4</sup> showed a public movement before the date of Pelatiah Webster's pamphlet.

Further, on January 27 and January 28, 1783, Hamilton, as member of Congress, made speeches in favor of the collection of taxes by the Federal Government.<sup>5</sup>

Finally, on February 12, 1783,—four days before the date assigned to Pelatiah Webster's pamphlet,—Congress, in accordance with a committee report said to have been presented on January 25 by Hamilton, passed a resolution in favor of

"the establishment of permanent and adequate funds to operate generally throughout the United States, to be collected by Congress."<sup>6</sup>

<sup>1</sup> Hamilton's Works, Lodge's 1904 ed., Vol. I, p. 213.

<sup>4</sup> *Ibid.*, p. 291.

<sup>5</sup> *Ibid.*, pp. 299-301.

<sup>3</sup> *Ibid.*, p. 261.

<sup>6</sup> *Ibid.*, p. 301.

It is true that Mr. Taylor thinks that at a considerably earlier date than 1783 Pelatiah Webster entered upon the scene, not with a plan of government, but with a suggestion of a general convention for the framing of a new Constitution. In the Madison Papers, in a statement made apparently late in the life of James Madison, it is written:

"A resort to a general convention to remodel the Confederacy was not a new idea. It had entered at an early date into the conversations and speculations of the most reflecting and foreseeing observers of the inadequacy of the powers allowed to Congress. In a pamphlet published in May, 1781, at the seat of Congress, Pelatiah Webster, an able though not conspicuous citizen, . . . remarks that 'the authority of Congress at present is very inadequate to the performance of their duties; and this indicates the necessity of their calling a *continental convention*, for the express purpose of ascertaining, defining, enlarging, and limiting, the duties and powers of their Constitution.'"

Madison, it seems, afterwards struck out the words "an able."<sup>8</sup> Mr. Taylor interprets Madison as saying that, among the early suggesters of a convention, the author of the pamphlet "was the first" (p. 27), and apparently knows nothing of the possible change in Madison's estimate of Pelatiah Webster. As to the pamphlet, Bancroft says:<sup>9</sup>

"Not by Pelatiah Webster, as stated by Madison. . . . First: at a later period, Webster collected his pamphlets in a volume, and this one is not among them; a disclaimer which, under the circumstances, is conclusive. Secondly: the style of this pamphlet of 1781 is totally unlike the style of those collected by Pelatiah Webster. My friend F. D. Stone of Philadelphia was good enough to communicate to me the bill for printing the pamphlet; it was made out against William Barton and paid by him. Further: Barton from time to time wrote pamphlets, of which, on a careful comparison, the style, language, and forms of expression are found to correspond to this pamphlet published in 1781. Without doubt it was written by William Barton."

Mr. Taylor does not reprint this pamphlet and does not quote Bancroft, but says (p. 27, n. 1):

"No attention should be paid to Bancroft's vain attempt to discredit Madison's statement. History of the Constitution, Vol. I, p. 24, n. 3. Apart from Madison's great accuracy and Bancroft's well-known inaccuracy stands the fact that the call of 1781 was a natural part of Pelatiah Webster's initiative as now understood. Madison was on the ground and knew the facts; Bancroft's inference is based on flimsy hearsay nearly a century after the event."

As Mr. Taylor's title page emphasizes his intention that this book be regarded as "an historical treatise," this review has been confined to describing Mr. Taylor's chief contention and to indicating that in this book Mr. Taylor has hardly succeeded fully in his attempt to convince readers of Pelatiah Webster's right to something like canonization. One thing is certain, namely, that when Alexander Hamilton framed the plan which he presented to the Federal Constitutional Convention in 1787; he personally had no need to go to Pelatiah Webster's pamphlet of 1783 for the ideas which Alexander Hamilton himself — acting principally, it may be, as a skilful transcriber of views widely prevalent — had reduced to writing in 1780.

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THE INDIVIDUALIZATION OF PUNISHMENT. By Raymond Saleilles. With an introduction by Gabriel Tarde. Translated by Rachel Szold Jastrow. With an introduction by Roscoe Pound. Boston: Little, Brown and Company. 1911. pp. xlv, 322.

This book is the fourth of the foreign treatises in the modern Criminal Science Series now being translated into English and published under the auspices of the American Institute of Criminal Law and Criminology. It consists of a series of popular lectures delivered before the College of Social Science

<sup>7</sup> Elliot's Debates, 1845 ed., Vol. V., p. 117.

<sup>8</sup> Documentary History of the Constitution, 1900 ed., Vol. III, p. 796 g.

<sup>9</sup> History of the Constitution, Vol. I, p. 24, n. 3.